

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i> Peter, Jr. & Betty E. Berretta)	
District B1, Block 57, Parcel 583)	
Residential Property)	Shelby County
Tax year 2005)	

INITIAL DECISION AND ORDER

Statement of the Case

The Shelby County Board of Equalization ("county board") has valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$102,200	\$0	\$102,200	\$25,550

On February 9, 2006, the State Board of Equalization ("State Board") received an appeal by the property owners.

The undersigned administrative judge conducted a hearing of this matter on April 4, 2006 in Memphis. In attendance at the hearing were appellant Peter Berretta and Shelby County Property Assessor's representative Chris Kirby.

Findings of Fact and Conclusions of Law

The five-acre parcel in question is an irregular-shaped lot at the intersection of Broadway and U.S. Highway 70 in Bartlett. Despite this ostensibly favorable location, Mr. Berretta was advised by the Bray-Davis Firm, LLC in a letter dated February 2, 2006 that the land could not feasibly be developed in accordance with the plan conditionally approved by the city. Consequently, Mr. Bray's letter concluded, "[t]he best use of this property at the present time is as a single unsubdivided lot."

A ditch runs through part of the subject lot; and a small portion of the land lies in the floodplain. In addition, four power poles are stationed along the frontage on Highway 70.

Mr. Berretta contended that the property in question was only worth about \$50,000. Though apparently listed for sale through a local realty firm since May 7, 2005,¹ this property had elicited only two verbal offers (for \$50,000 and \$80,000) as of the date of the hearing.

While conceding that the subject property may not be suitable for a residential subdivision, the Assessor's representative maintained that this land was worth the amount determined by the county board. Mr. Kirby referred to five sales of vacant lots in the general vicinity at prices ranging from \$27,800 to \$51,400 per acre.

¹The listing agreement, which was referenced in a letter from affiliate broker Joyce Harmon dated October 25, 2005, was not introduced into evidence. According to Mr. Berretta's testimony, no asking price was specified in that agreement.

Tenn. Code Ann. section 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...."

Since the taxpayers seek to change the present valuation of the subject property, they have the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

Four of the five sales discovered by Mr. Kirby involved significantly smaller lots; and the most recent of those five transactions occurred in 2003. Hence his market analysis does not constitute compelling support for the disputed value.

Yet, for his part, Mr. Berretta adduced no comparable sales to substantiate his opinion of value. To be sure, he did identify several features which would adversely impact the property in question. It has not been shown, however, that the current appraisal fails to take those negative factors into account. In this regard, it should be noted that the aforementioned listing agreement was not executed until *after* the January 1, 2005 reappraisal date. The State Board has generally rejected property assessment appeals to the extent that they are predicated on post-assessment date sales, listings, or other events. See In re Acme Boot Company & Ashland City Industrial Corporation (Cheatham County, Tax Year 1989, Final Decision and Order, August 7, 1990). Hence the fact that the listing has yet to produce an acceptable offer for the subject property does not establish its market value as of the assessment date for the tax year under appeal.

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2005:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$102,200	\$0	\$102,200	\$25,550

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of April, 2006.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Peter, Jr. & Betty E. Berretta
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office
Rita Clark, Assessor of Property

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